

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **SEN. DALE MAHLUM, CHAIRMAN**, on January 7, 2003  
at 9 A.M., in Room 422 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Sherm Anderson (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Kelly Gebhardt (R)  
Sen. Bob Keenan (R)  
Sen. Sam Kitzenberg (R)  
Sen. Glenn Roush (D)  
Sen. Don Ryan (D)  
Sen. Carolyn Squires (D)

**Members Excused:** Sen. Ken (Kim) Hansen (D)  
Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Sherrie Handel, Committee Secretary  
Eddy McClure, Staff Attorney, Legislative  
Services Division

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 21, 12/05/02; SB 28,  
12/05/02; SB 26, 12/05/02;  
SB 36, 12/06/02  
Executive Action: SB 21

Tape: 1; Side: A

HEARING ON SB 21

Sponsor: SENATOR WALTER L. MC NUTT, SD 50, SIDNEY

Proponents: Annie Goodwin, Commissioner of Banking & Financial Institutions, State of Montana; John Cadby, Montana Bankers Association; Keith L. Colbo, Montana Independent Bankers.

Opening Statement by Sponsor:

SEN. WALTER L. MC NUTT, SD 50, SIDNEY, informed the committee that he presented the bill at the request of the Department of Administration's Division of Banking with the purpose being to revise the banking act. He gave an overview of the changes and said he would allow the departments the opportunity to expand on the bill and present their rationale. The first change in the bill was to change the existing law by removing the word "penalty" from the bank investing its own stock. He told the committee there was some rationale that would later be explained through examination and other things gone through by banks that this penalty is not meaningful anymore. The second point conveyed by SEN. MCNUTT was the department needs to enter into interstate agreements with bank regulators or examiners because of the prohibitive nature of interstate banking. SEN. MCNUTT recounted the third change, the removal of some verbiage, "trust" and "trustee" from the law covering non-licensed entities. He said the law right now includes all of these entities and some are in violation and need not be because they need not go to the commission for a permit to do business. The fourth change was a change of the bank's limitations on its ability to borrow money and had to do with the safety and soundness procedures in banks and borrowing money from the Federal Home Loan Bank. SEN. MCNUTT said the fifth change would be to develop a business plan for bank property held for future bank use. He then turned over the podium to the department to allow them to explain their rationale behind the changes.

Proponents' Testimony:

Annie Goodwin, Commissioner of Banking and Financial Institutions for the State of Montana told the committee that the department is proposing SB 21 as a housekeeping measure to clean up outdated and unclear language in the act and went on to verbally recap her submitted written testimony, **EXHIBIT (bus02a01)**.

John Cadby, Montana Bankers Association, asked to go on record in support of the bill.

**Keith L. Colbo, Executive Director of the Montana Independent Bankers**, stated that after reviewing the bill, they stood in full support of SB 21.

**Questions from Committee Members and Responses:**

**SEN. DON RYAN** asked **Ms. Goodwin** to enlighten the committee about Section 2 and the Department's being able to enter into interstate agreements with bank regulators in other states and what problems there were since 2001. **Ms. Goodwin** said that since October 1, 2001, there have been two applications for interstate mergers, one involving First Interstate Bank out of Billings with banks in the state of Wyoming. First Interstate chose to be headquartered in the state of Montana. Section 2 of SB 21 would allow the banks in Wyoming that utilize our examiners to examine the institutions.

**Closing by Sponsor:**

**SEN. MC NUTT** said that appropriately he wanted to share that he is director of a bank but there was no conflict of interest. He recapped by saying that examinations are serious business and this bill makes good sense.

**HEARING ON SB 26**

**Sponsor:** **SENATOR JEFF MANGAN, SD 23, GREAT FALLS**

**Proponents:** **Annie Goodwin, Commissioner of Banking and Financial Institutions for the State of Montana; John Cadby, Montana Bankers Association; Chris J. Gallus, Staples Law Firm representing the Consumer Lending Alliance; Chris J. Gallus, Staples Law Firm representing the Consumer Lending Alliance; and, Cort Jensen, Montana Office of Consumer Protection.**

**{Tape: 1; Side: B}**

**Opening Statement by Sponsor:**

**SEN. JEFF MANGAN, SD 23, GREAT FALLS** opened by saying that the changes proposed in SB 26 and SB 28 are fairly similar. He shared some background from the 2001 session when they attempted to create some regulation in the title loan industry. A lot of what they did was based on the Deferred Deposit Act. In the past interim, the Division of Banking found some ways to make it work better and **SEN. MANGAN** agreed to sponsor SB 26 and SB 28 on behalf of the Division of Banking. He then clarified the changes

to existing law that are found in SB 26 as well as the amendments, **EXHIBIT (bus02a02)** (SB002601.aem).

**Proponents' Testimony:**

**Annie Goodwin, Commissioner of Banking and Financial Institutions for the State of Montana** explained that SB 26 was developed by the division to respond to clarifications within the existing language under the Title Loan Act. She distributed a briefing paper for the committee's review, **EXHIBIT (bus02a03)**; however, she chose not to go through each item because **SEN. MANGAN** had done such a fine job in reviewing the bill and amendments. For the record, **Ms. Goodwin** indicated that **Pat Harper, AARP**, was unable to be at the hearing and had provided written support of the bill via **Ms. Goodwin EXHIBIT (bus02a04)**. She urged the committee's support of SB 26 and stated she was available to answer any questions from the committee.

**John Cadby, Montana Bankers Association**, offered his association's support of the bill.

**Chris J. Gallus, Staples Law Firm representing the Consumer Lending Alliance**, stated they stand in support of both SB 26 and SB 28 as well as the amendments.

**Ms. Goodwin** also offered her support of the amendments at the request of **VICE CHAIRMAN SPRAGUE**.

**Cort Jensen, Montana Office of Consumer Protection**, lent their support for the bill and amendments.

**Questions from Committee Members and Responses:**

**VICE CHAIRMAN SPRAGUE** requested that **SEN. MANGAN** redefine page 1, lines 25 and 26, where he mentioned the word "eliminate". **SEN. MANGAN** did not have the definition in front of him, so he asked **Ms. Goodwin** to clarify for him. She shared that the financial institution definition under 32-8-502 is very similar to what presently exists under the law, but it would also include regulated financial institutions, which would include consumer loan companies.

**Closing by Sponsor:**

**SEN. MANGAN** stated he would close on both SB 26 and SB 28 at the close of the SB 28 hearing.

**HEARING ON SB 28**

**Sponsor:** SENATOR JEFF MANGAN, SD 23, GREAT FALLS

**Proponents:**

Annie Goodwin, Commissioner of Banking and Financial Institutions for the State of Montana; John Cadby, Montana Bankers Association; Bernie Harrington, Montana Financial Service Centers; Chris J. Gallus, Staples Law Firm representing the Consumer Lending Alliance; and Cort Jensen, Montana Office of Consumer Protection.

**Opening Statement by Sponsor:**

**SEN. MANGAN** reiterated that SB 26 and SB 28 are almost exactly the same with just a couple of exceptions. The Deferred Deposit Act was created four years ago and it was the first time that this body decided to take a look at regulating this type of market. He said they were extremely fortunate to be able to work with the industry, the Departments of Commerce and Banking, to come up with a fairly clean and workable set of regulations. Last year they did a couple more clean-up measures in the bill and again they had a couple of issues they wanted to clarify once again. He went on to recount the details of the changes.

**Proponents' Testimony:**

**Annie Goodwin, Commissioner of Banking and Financial Institutions for the State of Montana**, stated her group oversees the deferred deposit lenders in Montana and that SB 28 was developed by her division in an effort to clarify existing language in the act and supports the bill as amended **EXHIBIT (bus02a05)** (SB002801.aem) and distributed their briefing paper for SB 28, **EXHIBIT (bus02a06)**.

**John Cadby, Montana Bankers Association**, asked to go on record in support of SB28 as amended.

**Bernie Harrington, Montana Financial Service Centers**, said that he felt lucky to have a bill sponsored to regulate the industry so that some of the abuses that could occur would not occur. He shared their strong support of the bill and, as a sidebar, stated they have had four years of regulation under the statute and he wanted to compliment the employees of the Division of Banking.

**Chris J. Gallus, Staples Law Firm representing the Consumer Lending Alliance** commented that their reasons for supporting SB 28 are the same as those stated for SB 26.

**Cort Jensen, Montana Office of Consumer Protection** lent their support for the bill as amended. His only comment was on the amendment to raise the fee from \$15 to \$30 and his question was how many times could the \$30 fee be charged? He asked for clarity from the committee.

**Questions from Committee Members and Responses:**

**SEN. COCCHIARELLA** asked **Ms. Goodwin** if there had been any complaints to her office about anything has gone on with either of the entities, especially the credit loans, since the legislation was passed? **Ms. Goodwin** confirmed that her division had received complaints from consumers in both industries, but with the efforts of their examiners going to the businesses and resolving the complaints, they have been able to work with both the deferred deposit lenders as well as title lenders. **SEN. COCCHIARELLA** requested information on license revocations or fines being levied for serious offenses. According to **Ms. Goodwin**, there had not been a suspension or revocation of a license as a result of any complaints received in their office.

**SEN. RYAN** asked **Ms. Goodwin** what the volume of money was being discussed in a given year; how much money was being loaned out and what is the amount people are paying on those checks? **Ms. Goodwin** related that the amount of loans that were made since the inception of the act in 1999 was \$6.1 million. The number of loans made to Montana borrowers was close to 150,000. **VICE CHAIRMAN SPRAGUE** assisted in determining exactly what information the committee needed from **Ms. Goodwin's** division. He then proceeded to share information for new members. He said that all of this industry was up and running and there was no regulation for it. He said we need to know how far the amount has grown since regulation. **Ms. Goodwin** said the title loan information may not be as accurate because of the short time since the regulation began. After some clarification of the issue by **VICE CHAIRMAN SPRAGUE**, she was asked to respond to **SEN. RYAN'S** request and send any information she had to the committee, **EXHIBIT (bus02a07)**.

**{Tape: 2; Side: A}**

**SEN. GEBHARDT** asked **Mr. Jensen** about the \$30 fee and how it could be charged twice. **Mr. Jensen** related that his organization has had arguments from debt collectors that said they tried to

collect the check the first time. It bounced. They charged the \$30 fee and then set up an electronic re-billing and charged the fee again and again. However, **Mr. Jensen** didn't feel the law was intended to operate that way. **SEN. MANGAN** further clarified **Mr. Jensen's** statements by telling the committee that the law states the lender can only receive up to a maximum of \$30. **Mr. Harrington** shared that the industry can only collect the fee if they collect the check and they can only collect the fee one time. If the item goes to a third party collector, it is completely out of their hands. The lender only gets the principal amount of the check back.

**SEN. ANDERSON** asked **Mr. Jensen** for further clarification of when the individual writes the check and it doesn't clear, is the institution allowed to charge a one-time fee. If the individual asked the lender to redeposit the check, then the lender would not be able to collect the fee again if the check bounced. **Mr. Jensen** stated that was the way it is under current law.

**SEN. SQUIRES** asked **Mr. Harrington** if his organization tells them to raise the limit when the check comes in. **Mr. Harrington** said their practice is to contact the customer if the check is not covered. The policy is that the customer was given some time to cover the check.

**SEN. RYAN** questioned **Mr. Harrington** about Section 5, No. 2, regarding the 25% of the principal amount of the deferred deposit loan and if that was based on a time frame of a month or one week or a year. **Mr. Harrington** answered that in the statute, the maximum time period is 31 days. The time period in which the fees are charge cannot exceed that. A minimum amount is actually up to the borrower and lender with the traditional practice in the industry says that these checks should go to the bank when that customer has the money to pay them. Generally, if a customer goes into one of their locations and cashes a \$100 check and the fee is \$15, those consumers are looking to cover four or five checks at any institution. The time period can be any time the lender and borrow agree to.

**Closing by Sponsor:**

**SEN. MANGAN** closed by saying that he had developed some professional relationships with deferred deposit places due to his interest in this bill when he began working on it four years ago. He said he invited himself to an audit of **Mr. Harrington's** business in Great Falls to help him understand what was going on. He said the Deferred Deposit Act put into place in 1999 is working and it was a good process. The industry has been working with the division. The bill in front of the committee today

clarifies, with the support of the division and the industry, some things that have come up in the past couple of years. He urged the committee to do pass the bill along with the amendments. **SEN. MANGAN** noted that there was another place in the bill that needed to have the \$15 fee changed to \$30. He asked **Ms. McClure** to draft that amendment.

#### HEARING ON SB 36

**Sponsor:** SENATOR DUANE GRIMES, SD 20, CLANCY

**Proponents:** Beth McLaughlin, Montana Supreme Court; L. Harold Blattie, Montana Association of Counties; and Bob Worthington, Montana Municipal Insurance Association.

#### Opening Statement by Sponsor:

**SEN. GRIMES** opened by saying he was bringing SB 36 to the committee because certain requirements for worker's compensation benefits for water commissioners had not been met. Right now the code states that it should be the district court; however, the court is not, in a true sense, their employer.

#### Proponents' Testimony:

**Beth McLaughlin, Montana Supreme Court administrator's office,** stated that this is one of several bills that needed to be cleaned up in July of 2002. Water Commissioners are appointed by district court judges at the insistence of water users. The commissioners go out and ensure that the water decrees are actually being followed. A 1984 Attorney General's opinion stated that water commissioners were employees of district courts and that district courts were responsible for providing their worker's comp coverage. Because the district courts were previously county funded, her office found that about half of the counties were paying that coverage and the other half of the counties were unaware of the Attorney General's opinion. As the court, her office felt an obligation to provide this coverage and follow the Attorney General's opinion. They do not believe nor do they have the funding or the FTE for the water commissioners to be their employees. They do not believe that it was the legislature's intent; however, her office did want to make sure the water commissioners had worker's comp coverage. They worked with their insurance carriers to cover the water commissioners for the 2002 agricultural season. She said this bill resolves the dilemma. She stated that SB 36 asks that water commissioners would be required to purchase, as sole proprietors, their own worker's comp policy. The cost of the worker's compensation policy would be passed on to the water users who already pay the



wages and any expenses of water commissioners. In closing she asked that the committee support the bill.

**Harold Blattie, Montana Association of Counties**, rose in support of the bill.

**Bob Worthington, Montana Municipal Insurance Authority**, also expressed their support of the bill.

**Informational Witnesses:**

**Kevin Braun, Montana Department of Labor and Industry**, thanked **SEN. MANGAN** for his support of the bill. He explained how not passing this bill would impact his office and asked that committee vote favorably on it with amendments to provide clarity.

*{Tape: 2; Side: B}* was not used. *{Tape: 3; Side: A}* now begins.

**Questions from Committee Members and Responses:**

**VICE CHAIRMAN SPRAGUE** asked who signs the checks for the water commissioners. **SEN. GEBHARDT** replied that counties were asked by the court to do the payroll for water sponsors, so the county commissioners signed the checks this past year. **VICE CHAIRMAN SPRAGUE** then inquired who hires and fires the water commissioners. According to **Ms. McLaughlin**, the water commissioners are appointed by the district court judge, but the water users request that the district judges appoint the water commissioners

**SEN. COCCHIARELLA** stated that this bill asks those water commissioners to be sole proprietors. **Ms. McLaughlin** replied that the water commissioners would, in fact, be required to purchase their worker's compensation insurance as sole proprietors. **SEN. COCCHIARELLA** clarified that the water users group is not the employer of the water commissioners for the sake of worker's comp purchase. When they are appointed, the water commissioners become sole proprietors and have to purchase their own worker's comp insurance.

**Curtis Larson, attorney with the Montana State Fund**, shared that he works on these underwriting issues for the State Fund. He said the water commissioners would be treated as sole proprietors; and, under state law, there is a minimum and maximum level of coverage a sole proprietor is required to have. The water commissioners would only be required to have coverage for the season, six months maximum. His estimate was that each water commissioner would have to pay \$300 per year for coverage.

**SEN. RYAN** had questions about running the paycheck through the counties and whether the water users will have to run their increase in water payments through their county. **SEN. GEBHARDT** reported on his county's issues with this subject. He stated that there are all sorts of problems with doing it that way, such as not all of the money being collected and administrative costs and thinks it needs to be addressed.

**VICE CHAIRMAN SPRAGUE** stated that a sub-committee would be appointed consisting of **SEN. COCCHIARELLA, CHAIR; SEN. RYAN** and **SEN. GEBHARDT**.

**SEN. ANDERSON** expressed his concerns about the employee/employer relationship built into the bill. He said it is requiring the water commissioner to purchase a work comp policy, but there is no grammar to prevent the water commissioner from getting a policy as an independent contractor and exempting himself.

**VICE CHAIRMAN SPRAGUE** excused **SEN. RYAN** from the sub-committee and appointed **SEN. ANDERSON** to replace him.

**SEN. COCCHIARELLA** asked **VICE CHAIRMAN SPRAGUE** to ask **Mr. Braun** to clear up the confusion about the definition of sole proprietor. **Mr. Braun** stated that a sole proprietor is a person who is the single owner of a business.

The sub-committee meeting was set for Wednesday, January 8, 2003 at 8 a.m. in Room 422.

#### EXECUTIVE ACTION ON SB 21

**Motion/Vote:** **SEN. SQUIRES** moved that **SB 21 DO PASS. Motion carried 10-0.**

#### ADJOURNMENT

Adjournment: 12:03 P.M.

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SEN. DALE MAHLUM, Chairman

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SHERRIE HANDEL, Secretary

January 7, 2003

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**EXHIBIT** (bus02aad)